

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 12, 2003

GSBCA 15983-RELO

In the Matter of SUSAN E. CLARK

Susan E. Clark, Orange Park, FL, Claimant.

G. J. Murphy, Disbursing Officer, Personnel Support Activity, Department of the Navy, Jacksonville, FL, appearing for Department of the Navy.

WILLIAMS, Board Judge.

An employee is no longer entitled to receive temporary quarters subsistence expenses (TQSE) once she occupies permanent quarters.

Background

Claimant, Susan E. Clark, a management assistant with the United States Naval Air Pacific Repair Activity in Atsugi, Japan, was transferred to the Naval Air Depot in Jacksonville, Florida, with a reporting date of July 1, 2002. Her travel orders authorized temporary quarters subsistence expenses (TQSE).

Claimant began occupying temporary quarters on June 30, 2002, and moved into a townhouse which eventually became her permanent quarters on August 18, 2002. Claimant signed a lease with Bluff House Townhome Apartments effective on August 15, 2002, because as a single mother she had looked at over thirty apartments, townhouses, and condominiums and had not found one that could accommodate her and her daughter in a safe neighborhood within her budget. She took this unit because it offered a five percent military discount, was located within Clay County school systems, and she could take possession in time to receive her household goods (HHG), which she understood would be delivered no later than August 29, 2002. Claimant further explained that she "took the unit while it was available." According to a letter from Bluff House Townhome Apartments, claimant paid her rent on August 15, 2002, for the remainder of August and also paid a \$200 security deposit. However, claimant did not move into the townhouse until August 18, 2002. She explained:

I remained at Suburban Lodge hotel until 18 Aug 02 because if I had checked out early, my daily rate of \$29.86 (before taxes) would have changed to a daily rate of \$52.00 (before taxes). I was staying at the hotel for a weekly fee of \$229.95 (including taxes). Five nights at \$52.00 per night is \$260.00 before the additional taxes. It was more cost effective for the government if I kept the weekly rate and then moved to the townhouse for a daily rate of \$23.67, so that is what I did.

When her HHG did not arrive and could not be located, claimant spoke with her supervisors in Jacksonville, and they advised her that they did not know when her HHG would arrive. The supervisors explained to claimant that her HHG had been shipped "DPM [direct payment method] commercially" and that since they had been shipped that way little could be done to assist her. According to the supervisors, a "DPM shipment sits and waits for the next available transportation that is going in the same direction." As a result of the delayed delivery of her HHG, claimant lived in an empty townhouse for three weeks past the expected delivery date. She purchased a mattress and sat and slept on the floor. Her five-year-old daughter had to stay with relatives in another location while she awaited delivery of furniture and cookware. She was required to dine out for an extra month. Claimant cleaned her carpets with a lint brush, used the computer at Kinko's and the public library, and had to purchase items included in her shipment such as an ironing board, shower rod and curtain, iron, and towels. Claimant's HHG were delivered on September 19, 2002.

The agency denied Ms. Clark's claim for TQSE after August 15, 2002, reasoning that on that date the townhouse became her permanent quarters.

Discussion

According to statute, when the Government transfers an employee from one permanent duty station to another in the interest of the Government, the agency has the authority to pay the subsistence expenses that the employee incurs while occupying temporary quarters, provided certain requirements are met. 5 U.S.C. § 5724a(c) (2000).

The Federal Travel Regulation (FTR) in effect at the time of claimant's transfer defined "temporary quarters" as follows: "The term 'temporary quarters' refers to lodging obtained for the purpose of temporary occupancy from private or commercial sources." 41 CFR 302-6.1 (2002). The regulation further provided: "Temporary quarters should be used only if, and only for as long as, necessary until the employee and/or his/her immediate family can move into permanent residence quarters." *Id.* 302-6.300. "If [an employee's] temporary quarters become [his or her] permanent residence quarters, [the employee] may receive a TQSE allowance only if [he or she] shows in a manner satisfactory to [his or her] agency that [he or she] initially intended to occupy the quarters temporarily." *Id.* 302-6.14. "In determining whether quarters are 'temporary', [the agency] should consider factors such as the duration of the lease, movement of household effects into the quarters, the type of quarters, the employee's expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters." *Id.* 302-6.305.¹

¹The previous version of the FTR contained the same rules, but in more concise form in 41 CFR 302-5.2(c) (2001).

If an employee occupies quarters that eventually become permanent quarters, the agency may still reimburse the employee for TQSE if, in the agency's judgment, the employee makes a satisfactory showing that he or she intended initially to occupy the quarters only temporarily. Steven F. Bushey, GSBCA 15289-RELO, 01-1 BCA ¶ 31,291; Arthur T. O'Connor, GSBCA 14422-RELO, 98-1 BCA ¶ 29,598. The principal consideration in making this determination is the intention of the employee at the time the living arrangement was entered into. Rod W. Schmidt, GSBCA 15940-RELO (Feb. 5, 2003) ("The relevant inquiry is whether the transferring employee intends to continue to occupy the dwelling in question on a permanent basis."); see also Leahrae Rudolph, GSBCA 15424-RELO, 01-1 BCA ¶ 31,332; Brenda Byles, GSBCA 14592-RELO, 99-1 BCA ¶ 30,156; Kim R. Klotz, GSBCA 13648-RELO, 97-1 BCA ¶ 28,789.

In Gerald Taylor, GSBCA 15251-RELO, 00-2 BCA ¶ 31,016, the Board concluded that an employee who had "camped out in his empty apartment temporarily over the weekend," but then promptly vacated that apartment and moved into a hotel, did not actually move into his permanent quarters. The Board reasoned: "He clearly did not intend to live there without his household goods -- he simply did so because of the timing of his arrival on Friday evening" and limited his stay to the weekend. The Board distinguished Taylor from other cases in which the Comptroller General had rejected contentions that the initial occupancy of permanent quarters should be regarded as temporary due to delays in the arrival of HHG. The Board noted: "In these cases, however, the employees did not move in and then immediately move out -- they stayed throughout the period when the permanent quarters were less than entirely comfortable. This is more indicative of an intent to enter into permanent occupancy, thus terminating eligibility for TQSE." Taylor, 00-2 BCA at 153,189 n.1. Unfortunately for claimant, this is precisely her situation. The only indicium of her intent to remain only temporarily was the absence of her HHG.

The record indicates that once claimant moved into the townhouse on August 18, 2002, she intended to live there on a permanent basis given her concern for the school district, the fact that she put down a security deposit, signed a lease, and essentially "camped out" at the apartment until her HHG arrived and she was able to move her daughter in with her. While we are cognizant that the claimant was living in a difficult situation, this was a situation of her own choosing and appears to have been motivated by a desire to move into the townhouse while it was available despite the absence of her HHG and the uncertainty as to when they would arrive.

Decision

The claim is granted in part. The agency denied claimant TQSE effective August 15, 2002. However, claimant did not vacate her hotel, move into the townhouse, and intend to occupy that residence permanently until August 18. Therefore, claimant is entitled to TQSE for the period August 15-17, 2002.

MARY ELLEN COSTER WILLIAMS
Board Judge

